IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 25-08-2006

CORAM:

THE HON'BLE MR.JUSTICE P.K.MISRA
THE HON'BLE MR.JUSTICE K.MOHANRAM
AND
THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.Nos.2288, 2585, 2670, 3246, 3270, 3414, 3449, 3603, 3604, 3902, 4001 to 4004, 4017, 4140, 4369, 5362, 5396, 7576, 7577 10492, 10886 of 1996, 1918, 3562, 3563, 3612, 4548, 8327 and 9319 of 1997 and 6752 of 1998
AND
WMP.NOs.5241, 14471, 17046, 5272, 5502, 5549, 5795, 5796, 6257, 6423, 6425, 6426, 6428, 6444, 7015, 8535, 11176, 11178 and 13899 of 1996

WP.2288 of 1996

R. Pari .. Petitioner

Vs.

1. The Special Tahsildar,
Adi Dravidar Welfare,
Devakkottai
(Pasumpon Muthuramalinga
Thevar District)

2. The District Collector,
Sivagangai
(Pasumpon Muthuramalinga
Thevar District) .. Respondents

W.P.No.2585 of 1996

1.K.Sundaram
2.Minor Rajasekar
3.Minor Vinoth
Minors 2 & 3 rep by their
natural Guardian K.Sundaram .. Petitioners

-vs-

1.The District Collector,
North Arcot Ambedkar District,
Vellore, N.A.A.District.

2.The Spl.Tahsildar,
Adi Dravidar Welfare
Gudiyatham, N.A.A.District. .. Respondents

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W.P.NO.2670 of 1996

1.S.Nagoor Kani
2.Magudannan
3.Meera Mohideen
All sons of Sheik Mohideen ... Petitioners

-vs-

1.The Collector,
Tirunelveli Kattabomman District,
Tirunelveli..

2.The Spl.Tahsildar,
Adi Dravidar Welfare,
Tenkasi ... Respondents

W.P.No. 3246 of 1996

K.Muruganantham .. Petitioner

-vs-

1.State of Tamil Nadu,
rep by its Secretary to
Government, Adhi Dravidar
Tribal Welfare Dept.,
Fort St George,
Chennai.9.

2.The District Collector,
Sivagangai,
P.M.T.District.

3.The Special Tahsildar,
ADW Sivagangai,
P.M.T Dist. .. Respondents

W.P.No. 3270 of 1996

S.Nagaraj .. Petitioner

-vs-

The Collector of
Dharmapuri,
Dharmapuri District. .. Respondent

W.P.No. 3414 of 1996

Muni Chandrappa .. Petitioner

-vs-

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1.collector of Dharmapuri
Dharmapuri

2.Special Tahsildar,
Adi Dravidar Welfare,
Krishnagiri ... Respondents

W.P.NO. 3449 of 1996

M.Kuttappa ... Petitioner

-vs-

1.District Collector,
North Arcot Ambedkar District,
vellore

2.The Spl.Tahsildar,
Adi Dravidar Welfare,
Walajah, N.A.A.District ... Respondents

W.P.No 3603 OF 1996

1.K.Ranganathan
2.K.Parthasarathy ... Petitioners

-vs-

1.District Collector,
South Arcot, Vallalar District,
Cuddalore.

2.The Special Tahsildar,
Adi Dravidar Welfare,
Cuddalore, S.A.V.District ... Respondents

W.P.No. 3604 of 1996

A.Ramasamy Gounder ... Petitioner

-vs-

1.The State of Tamil Nadu,
rep by the Secretary to
Government, Adi Dravidar Tribal Welfare
Department, Fort St George,
Chennai.9

2.The District Collector,
Coimbatore District.

3.The Tahsildar,
Weaker Section,
Family Welfare Scheme,
coimbatore North ... Respondents

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W.P.No. 3902 of 1996

M.Dhasarathan ... Petitioner

-vs-

The District Collector,
North Arcot Ambedkar District,
Vellore

2.The Special Tahsildar,
Adi Dravidar Welfare
Gudiyatham, N.A.A.District. ... Respondents

Edward Kennedy ... Petitioner in W.P.No. 4001 /96

Carolene ... Petitioner in W.P.No. 4002 /96

Rieta Josephine Shanthi ... Petitioner in W.P.No. 4003 / 96

Hemalatha Johnpaul Alankaram
Minor rep by her guardian
Mother Angel Mary ... Petitioner in W.P.No. 4004 / 06

-vs-

1.The Special Tahsildar,
Adi Dravidar Welfare,
Sivaganga

2.The District Collector,
Sivaganga,
Pasumpon Muthuramalinga
Thevar District.

3.The Government of Tamil
Nadu, rep by its
Secretary,
Department of Adi Dravidar
and Tribal Welfare,
Fort St.George, Chennai-9.. Respondents in W.P.Nos.
4001 to 4004 of 1996

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W.P.No. 4017 of 1996

1.Perumal Ammal
2.Mahalakshmi ..Petitioners in W.P No.
4017 of 1996

-vs-

1.The State of Tamil Nadu
rep by its Secretary to
Government,
Department of Adi Dravidar

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and Tribal Welfare, Fort St. George,
Chennai-9.

2. The District Collector,
Coimbatore, Coimbatore District.

3. The Tahsildar (Waker Section
Family Welfare Scheme) Coimbatore North. ... Respondents

W.P.No.4140 of 1996

Palaniammal ... Petitioner

VS

1. The District Collector
Salem.

2. The Land Acquisition Officer,
and Special Tahsildar
(Adi Dravidar Welfare)
Sankari. ... Respondents

W.P.No.4369 of 1996

M. Venkataraman ... Petitioner

VS

1. The District Collector,
Sivagangai
P.M.T. District.

2. The Special Tahsildar
(Adi Dravidar Welfare
Collectorate, Sivagangai. ... Respondents

W.P.No.5362/96

1. Palaniammal
2. Rukmaniammal
3. Valliammal ... Petitioners

VS

1. The District Collector,
Coimbatore District.

2. The Spl. Tahsildar (L.A)
Adi Dravidar Welfare,
Pollachi,
Coimbatore District. ... Respondents

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W.P.No.5396 of 1996

Sri Lakshmi Saraswathi Textiles
(Arani) Ltd., rep by its Managing
Director, R. Srihari Naidu. ... Petitioner

VS

1. The State of Tamilnadu
rep by its Secretary to Government
Department of Adi Dravidar
and Tribal Welfare,
Fort St. George,
Chennai-9.

2. The District Collector,
Vellore, N.A.A. District.

3. The Special Tahsildar
Land Acquisition (Adi Dravidar Welfare)
Vellore. N.A.A.District. ... Respondents

Pattuswamy ... Petition in W.P.NO.7576/96
K. Pandian ... Petitioner in W.P.No.7577/96

VS

1. The Spl. Tahsildar,
Adi Dravidar Welfare, Chidambaram,
South Arcot,
Vallalar District.

2. The Collector of South Arcot
Vallalar District and
Cuddalore. .. Respondents in
W.P.Nos.7576& 7577/96

W.P.No.10492/96

Chokkanathan ... Petitioner

Vs

1.The Secretary to Government of Tamilnadu
Adi Dravidar
and Tribal Welfare Department,
Fort St. George,
Chennai-9.

2. The Special Tahsildar,
Adi Dravidar & Tribal Welfare,
Tiruttani,
Chengalpattu MGR District ... Respondents

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W.P.No.10886 of 1996

1. Abdulvasi
2. Nisan Ahmed
3. Mustak Ahmed
4. Abdul Sami ... Petitioners

VS

1. The Distrct Collector,
Vellore, N.A.A District.

2. The Special Tahsildar (ADW)
Gudiyatham, N.A.A District. ... Respondents

W.P.No.1918 of 1997

S. Sam David ... Petitioner

Vs

1. The State of Tamilnadu,
rep by its District Collector
Kanyakumari District at Nagercoil.

2. The Spl. Tahsildar (ADW) &
Land Acquisition Officer,
Padmanabhapuram,
Kanyakumari District ... Respondents

W.P.No.3562/97

Durairaj ... Petitioner

VS

1. The Collector of Villupuram,
Collectorate, Villupuram Ramasamy
Padayachiar District.

2. The Special Tahsildar (ADW)
Ulundurpet, V.R.P. District ... Respondents

W.P.No.3563/97.

1. Sesiah Nadar
2. Antony Nadar ... Petitioner

VS

1. The District Adi Dravidar Welfare
Officer,
Tirunelveli Kattabomman District.

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2. The Special Tahsildar (ADW)
Cheranmahadevi,
Tirunelveli Kattabomman District. ... Respondents

W.P.No.3612/97 and 8327/97

S.M.P.S.M. Sheikh Mydeen & Kader ... Petitioner in both WPS

VS

1. The District Collector,
Tirunelveli
Tirunelveli Kattabomman District.

2. The Special Tahsildar (ADW)
Tirunelveli. ... Respondents in both WPS

W.P.No.4548 of 1997

Byrammal ... Petitioner

VS

1. The Collector
Dharmapuri,
Dharmapuri District.

2. The Special Tahsildar
Adi Dravidar Welfare, Krishnagiri.

3. The Village Administrative Officer,
(Chandrappa) Kalingavaram ... Respondents

W.P.No.9319 of 1997

1. C. Ravikumar
2. C. Govindasamy ... Petitioners

VS

1. The State of Tamilnadu
rep by its Secretary to Government,
Adi Dravidar & Tribal Welfare Department,
Fort St.George, Chennai-9.

2. The Special Tahsildar
(Adi Dravidar Welfare)
Salem. ... Respondents

W.P.No.6752/98

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R. Peria Gounder ... Petitioner

Vs

1. The District Revenue Officer,
Namakkal,
Namakkal District.

2. The Land Acquisition Officer,
Special Tahsildar, Adidravidar Welfare
Namakkal. ... Respondents

Prayer in all WPs.

1. Petitions filed under Article 226 of the Constitution of India to issue a writ of certiorari that the notification dated 26.12.1995 published in the District Gazette No.88 dated 26.12.1995 under 4(1) of the Tamilnadu Acquisition of lands for Harijan Welfare Act (Act 31 of 1978) in so far as it relates to Survey No.145/1A measuring 0.09.0 out of 1.24.0 Hectares and Punjai lands comprised in Survey No.145/1B measuring 0.85.0 Hectares situate in Pudur Revenue Village, Utkadai, Vettaikkaranpatti Village, Devakottai Taluk, Pasumpon Muthuramalinga Thevar District is liable to be quashed. (WP.No.2288/96).

2. to issue a writ of Certiorari or any other appropriate writ or order or direction in the nature of a writ, calling for the entire records relating to the Notification of the 1st Respondent dated 25.11.1995 published in N.A.A. District Gazette in RCK.10/124301/94 under Section 4(1) of Tamil Nadu Acquisition of land for Harijan Welfare Scheme relating to the acquisition of land in Survey No.46/2 measuring 0.94.5 hectare in Melmuttukur Village, Gudiyattam Taluk, N.A.A. District and quash the same. (WP.No.2585/96)

3. Calling for the records of the respondents relating to the Section 4 (1) notification Published by the 1st respondent in Tirunelveli Kattabomman District Gazette No. 13, dated 14.8.1995 and Award No.12/95-96 of the 2nd respondent in A.877/94 dated 5.2.96 and quash the same in so far as they relate to the petitioners herein (W.P.No.2670/96)

4. To call for the records of the 2nd respondents relating to the notification issued order Form No.II, Published in the Pasumpon Muthuramalinga Thevar district Gazette, Sivagangai District dated 13.1.96 acquiring the petitioners Punja Land situated in S.No.283/7B Measuring 0.71 acres in Karungapatti O. Pudur Village P.M.T. District and quash the same. (W.P.No.3246/96)

5. Calling for the records of the respondent herein pursuant to Section 4 (1) notification Published in Dharmapuri District Gazette Extra Ordinary No. 23 dated 8.12.95 relating to the petitioners land measuring 0-62-0 hectare in S.No.426/3B of Nallur Village, Hosur Taluk, Dharmapuri District and quash the same. (W.P.No.3270/96)

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6. Calling for the records of the 4 (1) notification of the first respondent Published in Dharmapuri District Gazette Extra Ordinary dated 7.2.96 relating to the acquisition of the Petitioners land in S.No.33-2A of an extent of 0.36.0 Hectares in Nariganapuram Village, Hosur taluk, Dharmapuri District and quash the said notification (W.P.No.3414/96)

7. calling for the records pertaining to the notification published by the 1st respondent in District Gazette, Vellore North Arcot Ambedkar District in RCK.11/18713/95 dated 4.1.96 in respect of the lands belonging to the petitioner and quash the same. (W.P.No.3449/96)

8. calling for the records pertaining to the notification issued by the 1 st respondent in the District Gazette South Arcot Vallalar District Cuddalore in W2/7964/96 dated 27.2.96 in respect of the lands belonging to the petitioners and quash the same. (W.P.No.3603/96)

9. calling for the records of the 3rd respondent relating to the notice dated 5.2.96 issued in Form I under Rule 3 (1) of the Tamilnadu Act 31/78 and quash the same in respect of the lands belonging to the petitioner of an extent of 0.26.5 Hectares situated in S.No.656/3 in Samayanur Village Hamlet of No.22 of Nanjundapuram Village, Thadagam Post, Coimbatore- 641 108 (W.P.No.3604/96)

10. calling for the entire records relating to the notification of the 1st respondent dated 25.11.95 published in North Arcot Ambedkar District Gazette in RCIC/10/124300/94 extra ordinary under section 4 (1) of the Tamilnadu Act 31/1978 relating to the acquisition of the petitioner land in S.No.37/2A1 measuring 25 hectares in Melmuttukoor Village, Gudiyatham Taluk, N.A.A. District and quash the same as illegal and ultra vires of the Act (W.P.No.3902/96)

10(a) calling for the records of the 1st Respondent with respect to notice issued to the petitioner by the 1st respondent on 26.12.95 in Na.Ka.119/94 and the consequential notification dated 21.2.1996 published in the District Gazette of Pasumpon Muthuramalinga Thevar District, dated 24.2.1996 issued by the 2nd Respondent under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act No.31/78 in so far as it relates to the petitioner's land comprised in S.No.253/10, 253/13, 253/11 and 253/12 and quash the same. (WP.Nos.4001 to 4004/96).

11. calling for the for the records of the 3rd respondent relating to the notice dated 5.2.96 issued in Form I under Rule 3 (1) of the Tamilnadu Act 31/78 and quash the same in respect of the lands belonging to the petitioners of an extent of 0.35.0 Hectares situated in S.No.656/1 in Samayanur Village Hamlet of 22 Nanjundapuram Village, Coimbatore- 641 108 (W.P.No.4017/96)

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12. calling for the records of the respondent ending with the notification published at Page 6 of the Extraordinary issue of Salem District Gazette No9 dated 8.2.96 and the order of the 2nd respondent in ROC 1399/94(A) dated 29.2.96 and quash the same. (W.P.No.4140/96)

13. to issue a writ of certiorarified mandamus or any other appropriate writ or directions, calling for the records relating to the acquisition proceedings published in the Pasumpon Muthuramalinga Thevar District Gazette Extraordinary No.68 dated 26.12.1995, published under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 and all consequential proceedings ordered or issued or made by the 2nd respondent in respect of the petitioner's land comprised in S.No.315/3A1 dry measuring 0.61.0 Muthanendal Village, Vagudi Group, Manamadurai Taluk, Pasumpon Muthuramalinga Thevar District, quash the same and forbear the respondents herein from in any manner interfering with the possession and enjoyment of the said land by the petitioner. (WP.No.4369/96).

14. to issue a writ of certiorari calling for the records relating to the Notification issued by the 1st respondent herein i.e. The Collector, Coimbatore District, under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 and published in Coimbatore District Gazette, Extraordinary dated 6.12.1995 with respect to the petitioners' land comprised in S.F.No.147/1 (0.83.0 Hectares), 74 Pallapalayam Village, Udumalpet Taluk, Coimbatore District in Roc.No.144167/95(N-6) dated 25.11.1995 in so far as the petitioners' lands are concerned and the consequential notice dated 21.3.1996 issued by the 2nd Respondent in Na.Ka.1566/94/A in Form III Rules 5(1) of the said Rules and quash the same. (WP.No.5362/96)

15. calling for the records of the 2nd respondent relating to the proceedings in RC K 11/114708/95 dated 19.2.96 published in the District Gazette and quash the notification under Section 4 (1) of the Tamil Nadu Act 31/1978 in and by which the lands belonging to the petitioners of an extent of 1.05.0 Hectares in S.No.4 in Brahamanamangalam village and on an extent of 0.30.5 Hectares in W.No.341/1 in Vettuvanam Village has sought to be acquired. (W.P.No.5396/96)

16. calling for the records pertaining to the notification of the 2nd respondent under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan welfare Schemes Act 1978 (Act 31/78) published in the South Arcot Vallalar District Gazette extraordinary Part I dated 14.11.95 and quash the same in so far as it relates to the petitioners land to the extent of 0.09.5 and 0.32 hectares in S.Nos.44/1A2 and 44/2B situate at Allur Village Madura Poothangudi Sethiathope (Post) Chidambaram Taluk, South Arcot Vallalar District (W.P.No.7576/96 and 7577/96)

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17. calling for the records relating to the Section 4(1) Notification issued under the Tamil Nadu Acquisition of the land

for Harijan Welfare Scheme Act 31/78 published in the Chengalpattu MGR District Gazette No.13 dated 12.2.96 in respect of the land belonged to the pettioner in Survey No.273-10c2 of an extent of 0.20.0 hectares at Agoor Village, Tiruttani Taluk, Chengalpattu MGR District and quash the same. (W.P.No.10492/96)

18. calling for the entire records relating to the notification of the 1st respondent dated 3.2.96 published in North Arcot Ambedkar District Gazette in RCK 10/62191/95 (Extraordinary) under Section 4 (1) of the Petitioner's land in S.No.279/1-A, measuring 0.90.0 Hectares pernambur Village, Gudiyatham Taluk, NAA District and quash the same as illegal and ultra vires of the Act. (W.P.No.10886/96)

19. calling for the records relating to the land acquisition proceedings notified under Section 4 (1) of the Tamil nadu Acquisition of land for Harijan welfare Scheme Act 31/78 by the 1st respondent published in Kanyakumari District Gazettee dated 6.10.95 and consequential notice issued in A1 811/93 dated 21.1.97 by the 2nd respondent and quash the same in so far as the petitioner's land is concerned. (W.P.No.1918/97)

20. to issue a writ of certiorari, calling for the records relating to the Notification issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 1979 by the first respondent in respect of Petitioner's land bearing Survey Nos.112/15-C measuring 0.04.0 hectares, Survey No.118/1 measuring 0.32.0 hectares Survey 118/2A 0.50.0 hectares, Survey No.118/2B measuring 0.24.5 hectares, Survey No.118/2A measuring 0.26.0 hectares and in survey No.118/B measuring 0.36.5 hectares in all measuring 1.73.0 hectares in C.Meyyur Village of Tirukoilur Taluk, Villupuram Ramasamy Padayachiyar District, as published in the Villupuram Tamasamy Padayachiyar District Gazette Extraordinary No.29, dated 2.8.1996 and quash the same. (WP.No.3562/97).

21. Certiorified Mandamus calling for the records relating to Na.Ka.No.Pa-12047/97 dated 15.2.97 passed by the 1st respondent District Adi Dravidar Welfare Officer, Tirunveli Kattabomman District and quash the same and forbearing the respondents from acquiring the properties covered in S.No.1342/1A to an extent of 0.28.5 Hectares and S.No.1343/2 to an extent of 1.52.0 Hectares in Alwarkurichi Village, Ambasamudram Taluk, Tirunelveli Kattabomman District (W.P.No.3563/97)

22. Certiorari calling for the records in P2/18094/97 dated 27.2.97 on the file of the 1st respondent and quash the same (W.P.No.3612/97)

23. calling for the records in Na.Ka.P1/18076/97 dated 26.2.1997 published in district Gazette of Tirunelveli Kattabomman District dated 7.3.97 on the file of the 1st respondent herein and quash the same. (W.P.No.8327/97)

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24. to call for the records of the first respondent pursuant to section 4 (1) Notification published in the Dharmapuri District Gazette dated 25.2.97 relating to the petitioner's land in S.No.24/2 of an extent of 0.68.5 hectares in Kodikathammanapalli Village, Kalingavaram Post, Hosur Taluk, Dharmapuri District and quash the same (W.P.No.4548/97)

25. Mandamus forbearing the respondents from acquiring the lands belonging to the petitioners in Survey No.101/2 in Neerumullikuttai Village Salem Taluk & District to an extent of 1.73.0 Hectares pursuant to the notice ROC No.49/94 dated 13.5.96 issued by the 2nd respondent. (W.P.No.9319/97)

26. Certiorari call for the records pertaining to the notification under Section 4(1) of the Tamilnadu Acquisition of land for Harijan welfare (Act 31/78) published in Salem District Gazette No. 21 dated 22.11.95 in respect of the petitioners Land measuring 1.20 acres comprised in Survey No. 115/2A2/of Agaram Village, Tiruchengode Taluk, Namakkal District and the Consequential award notice made by the 2nd respondent in award No. 20-95-96 dated 29.3.96 and quash the same. (W.P.No.6752/98) respectively.

For Petitioners in all WPS.

Mr.S. Parthasarathy, Senior Advocate for
M/s. Sarvabhauman & Associates in
W.P.Nos.3604 & 4017 and for Mrs.Mythili Suresh in
W.P.No.5396 of 1996

Mr.M.V. Krishnan in W.P.No.3414 of 1996

Mr. Natarajan in W.P.Nos.4001 to 4004 of 1996
for M/s. Anand Das Gupta & Sagar

Mr.N. Damodaran in W.P.No.5362 of 1996

Mr. Hafiz Ali for Mr.I. Mahaboof Sheriff in
W.P.No.6732 of 1998

For Respondents in all WPs.

Mr.P.S. Raman, Additional Advocate General
Assisted by Mr.P. Subramanian, Govt. Advocate

O R D E R

P.K. MISRA, J

The questions referred to the Full Bench for determination in the context of Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) hereinafter referred to as "the Act" are as follows:-

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i) Is it necessary for the Collector to give a personal hearing to the owner in the context of his objections and the remarks of the Tahsildar?

ii) Is the owner entitled to a copy of the report of the Special Tahsildar or not?

iii) Should the Collector record his reasons in his order while dealing with the objections of the owner?

2. Before considering these questions, a brief introduction is required. The Act was enacted in the year 1978 to provide for acquisition of land for Harijan Welfare schemes. As soon as the Act was enacted, it was mired in legal controversy and its validity was challenged. The Madras High Court, by its Judgment dated 09.09.1981 declared that the Act was ultravires of the Constitution of India. However, in appeal, the Supreme Court upheld the validity of the Act except sub-section (1) of Section 11 to the extent that such provision provided that the compensation shall be paid in instalments. Such decision of the Supreme Court is reported in AIR 1995 SC 2114 equivalent to (1995) 1 SCC 519 (STATE OF TAMIL NADU AND OTHERS v. ANANTHI AMMAL AND OTHERS)

3. The relevant provisions may be noticed.

3.1 Under Section 3(g) of the Act, "Harijan Welfare Scheme" means,

> "any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling-house for Harijans or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling-house, burial or burning grounds, or for providing any other amenity for the benefit of Harijans".

3.2. Under Section 3(f) of the Act, "Harijan" means

> "members of the scheduled Castes and include Scheduled Tribes;
>
> (Explanation) (1) "Scheduled Castes" means the castes, races or tribes or parts of, or groups within, castes, races or tribes specified in the Constitution (Scheduled Castes) Order, 1950, made by the President under Article 341 of the Constitution as amended by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 (Central Act 108 of 1976).
>
> (2) "Scheduled Tribes" means the tribes or tribal communities, or parts of, or groups within, tribes or tribal communities,

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specified in the Constitution (Scheduled Tribes) Order, 1950 made by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 (Central Act 108 of 1976)."

3.3. Section 4 of the Act is extracted hereunder:

"Section 4 - Power to acquire land - (1) Where the District Collector is satisfied that, for the purpose of any Harijan Welfare Scheme, it is necesary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section (1), the District collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired.

(3) (a) The District collector may, where he has himself called upon the owner or other person to show cause under sub-section (2), pass such orders as he may deem fit on the cause so shown;

(b) Where any officer authorised by the District Collector has called upon the owner

or other person to show cause under sub-section (2), the officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District collector. After considering such report, the District Collector may pass such orders as he may deem fit."

4. Section 23 of the Act empowers the Government to make rules. The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules 1979, (hereinafter referred to as "the Rules") have been framed pursuant to such provisions.

4.1 Under Rule 2(b) 'Form' means a form appended to these rules.

4.2. Rule 3 contemplates the procedure for acquisition of land and is extracted hereunder:-

"3. Procedure for acquiring land -

(i) The District Collector or the officer authorised by him in this behalf shall serve a show cause notice in Form I under sub-section (2) of section 4 individually on the owner or on all persons interested in the land to be acquired. If the owner or any other

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person interested in the land resides elsewhere than where the land is situated, the show cause notice shall be sent by registered post (Acknowledgment Due) to the last known address of the owner or any other person interested.

(ii) The District Collector, if, after passing such orders as required by sub-sections (2) and (3) of section 4, is satisfied that it is necessary to acquire the land, notice in Form II to that effect shall be published in the District Gazette."

5. Form I, which is relatable to Rule 3(i), is to the following effect:

" Form I

Notice is hereby given that the land/lands specified in the Schedule below and situated in village,taluk district is/are necessary to be acquired for the purpose of

All persons interested in the land/lands are accordingly directed to lodge before the Collector of district/Officer authorised by the Collector of district under sub-section (2) of Section 4 of the Tamilnadu Acquisition of land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978), within fifteen days after service of this notice, a statement in writing of their/your objections if any, showing cause why the land/lands mentioned in the schedule below should not be acquired.

The statement of objections, if any, received after the expiry of the time stipulated or sent by a person, who is not interested in the land, is liable to be summarily rejected.

The statement of objections, if any, received within the time stipulated will be enquired into at the on_____ at the office of the . Then/you will be at liberty to appear in person or represented by pleader and adduce any oral and documentary evidence in support of their/your, objections, failing which, it will be presumed that they/you have no objection whatsoever in respect of the said land/lands to be acquired and action will be taken accordingly."

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6. The statutory provisions thus make it clear that the District Collector is the authority to exercise the power of eminent domain. As per Section 4(1), it is required that the Collector should be satisfied that the land is required for the purpose of any Harijan Welfare Scheme. Notice is required to be published in the District Gazette regarding the decision of the Collector to acquire the land. However, before taking such action, under Section 4(1), the District Collector or any officer authorised by the District Collector is required to call upon the owner or any other person, who, in the opinion of the District Collector or authorised officer may be interested to show cause why such land should not be acquired. Under Section 4(3)(a),

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after the cause is shown, the District Collector, where notice has been issued by him, may pass such orders as he may deem fit. However, under Section 4(3)(b), where such notice is issued by the authorised officer, such officer is required to make a report to the District Collector containing his recommendations on the cause shown, for the decision of the District Collector and the District Collector may pass such orders as he may deem fit after considering such report.

7. From the contents of Form I, it is apparent that the land owner or interested person is required to file objection within fifteen days after service of such notice in Form I and the objection if received after the time stipulated is liable to be summarily rejected. Similarly, the objection sent by person who is not interested in the land is also liable to be summarily rejected. However, the statement of objection received within the time, has to be enquired into at the office specified in such notice. In other words, if the notice has been issued by the District Collector, such objection would be enquired into at the office of the District Collector; whereas if the notice is issued by the authorised officer, such objection filed within time would be enquired into at the office of such authorised officer. The land owner or the interested person is also at liberty to adduce any oral or documentary evidence in support of the notice. Failure to be present in person or through pleader would lead to presumption that the noticee has no objection in respect of the land acquired.

8. From a combined reading of the provisions contained in Section 4, Rule 3 and the Form-I, it is thus apparent that the notice to show cause can be issued either by the District Collector or by the authorised officer. Where such notice is issued by the District Collector, all subsequent proceedings are continued before him and ultimately the Collector takes a decision on the basis of enquiry held by him. However, where such notice is issued by the authorised officer, the enquiry is conducted by such officer, who is thereafter required to make a report containing his recommendations on the cause shown by the owner and the decision is required to be taken by the District Collector.

9. The controversy is confined to the procedure to be followed when such enquiry is held by the authorised officer.

10. In 1998 (1) CTC 281, (THIRUMATHI PUSHPA BAI BAINSINGH V. DISTRICT COLLECTOR, TIRUNELVELI) a Division Bench, while dealing with the matter, without any detailed discussion set aside the order of the District Collector on the ground that after such report was submitted before the District Collector, no further opportunity had been given to the land owner and directed the District Collector to reconsider the matter after giving an opportunity to the land owner. Thereafter, a learned Single Judge of this Court in the decision reported in 2000 WLR 559 (SANNASI, S. AND OTHERS v. DISTRICT COLLECTOR, PUDUKKOTTAI AND ANOTHER) distinguished the aforesaid order of the Division Bench, analysed the various provisions and came to the conclusion that no such

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opportunity is contemplated under Section 4 of the Act. Subsequently, in 2005-2-L.W. 199 (THE DISTRICT COLLECTOR, NORTH ARCOT AMBEDKAR DISTRICT, VELLORE AND ANOTHER v. MANICKAM), the Division Bench without any detailed discussion accepted the contention of the State that it is not necessary for the District Collector to give a second opportunity of hearing.

11. In AIR 1968 SC 432 (ABDUL HUSSAIN TAYABALI ETC., v. THE STATE OF GUJARAT AND OTHERS), while considering the question of necessity of a further enquiry by the State at the stage of taking an appropriate decision under Section 6 of the Central Act, it was observed :-

> "16. The last proposition of Mr. Sanghi was that even though an inquiry under Section 5-A may be an administrative inquiry, the State Government was bound to give an opportunity to be heard to the appellants after receiving the report thereunder and before making up its mind for the purpose of issuing Section 6 notification. It is not in dispute that during Section 5-A inquiry the appellants were heard and their objections were taken on record. Under Section 5-A, the Collector has to hear the objections of the owner, take them on record and then submit his report to the Government. The Section also requires him to send along with his report the entire record of his inquiry which would include the objections. The report has merely recommendatory value and is not binding on the Government. The record has to accompany the report as it is for the Government to form independently its satisfaction. Both are sent to enable the Government to form its satisfaction that the acquisition is necessary for a public purpose or for the Company. It is then that Section 6 notification which declares that particular land is needed for either of the two purposes is issued. The Government thus had before it not only the opinion of Master but also all that the appellants had to say by way of objections against the proposed acquisition. The appellants therefore had an opportunity of being heard. Neither Section 5-A nor any other provision of the Act lays down that a second opportunity has to be given before the issuance of Section 6 notification."

The said decision was followed in AIR 1977 SC 497 (KALUMIYA KARIMMIYA v. THE STATE OF GUJARAT AND OTHERS), wherein it was observed :-

> "6. ... Although ordinarily, there should be no difficulty in furnishing a copy of the report under Section 5A to an objector, when he asks for the same, it is not a correct proposition that hearing under Section 5A is invalid because of failure to furnish a copy of the report at the conclusion of the hearing under the said section. Unless there were weighty reasons, a

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report in a public enquiry like this, should be available to the persons who take part in the enquiry. But failure to furnish a copy of the report of such an enquiry cannot vitiate the enquiry if it is otherwise not open to any valid objection. Apart from this solitary ground, our attention has not been drawn to any infirmity in the hearing under Section 5A. We are, therefore, unable to hold that the said enquiry under Section 5A was invalid.

7. The matter would have been different if a second enquiry were essential under the law at the stage when the State Government was considering the report under Section 5A for issuing its declaration under Section 6 of the Act. We are, however, clearly of opinion that there is no reason to hold that a second hearing by the State Government at that stage is necessary under Section 6 of the Act. (See Abdul Husain v. State of Gujarat (1968) 1 SCR 597 = (AIR 1968 SC 432). Since that is the position in law, failure to furnish a copy of the report under Section 5A is innocuous. ..."

12. The learned Additional Advocate General appearing for the State has submitted that the decision of the learned Single Judge, which was based on the observation made by the Supreme Court in AIR 1968 SC 432 (cited supra), and the decision of the Division Bench in 2005-2-L.W.199 (cited supra) taking similar view, require no reconsideration as according to him, the provisions contained in Sec.5A and 6 of the Land Acquisition Act, 1894, (hereinafter referred to as "the Central Act") are very much similar to the provisions contained in Section 4 of the Act.

13. The main contention on the part of the learned counsels appearing for the private land owners (the writ petitioners) is to the effect that even though some provisions of the Act are similar to the provisions contained in the Central Act, both the Statutes cannot be categorised as pari materia in all respects and therefore the ratio of the decision of the Supreme Court in AIR 1968 SC 432 (cited supra) need not be applied to the State Act particularly keeping in view the peculiar situation pertaining in the State as highlighted by the learned Single Judge in his order of reference.

14. In AIR 1995 SC 2114 (cited supra), while reversing the decision of the Madras High Court and upholding the validity of the provisions contained in the Act, except the provisions contained in Section 11 providing for compensation by instalments, the Supreme Court had observed as follows :-

"8. Sub-section (1) of Section 4 empowers the District Collector, if he is satisfied that it is necessary to acquire some land for the purpose of an Harijan Welfare Scheme, to acquire that land by publishing in the District Gazette a notice to the effect that he has decided to acquire it in pursuance of Section 4. Sub-section (2) of Section (2) of Section 4 obliges

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the District Collector or any Officer authorised by him in this behalf to call upon the owner or any other person who, in the opinion of the District Collector or the Officer so authorised, is interested in such land to show cause why it should not be acquired. Where the District Collector has called upon the owner or other person to show cause under sub-section (2). Clause (a) of sub-section (3) requires him to pass orders on the cause so shown. Where an Officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), Clause (b) of Section 3 requires that Officer to report to the District Collector his recommendations on the cause so shown and the District Collector is required to pass such orders as he may deem fit after considering the report. Sub-section (2) of Section 4, therefore, obliges the acquiring authority to serve notice upon the land owner and other persons interested in the land to show cause why it should not be acquired. By reason of sub-section (3) of Section 4, such cause has to be taken into account and orders passed in respect thereof. It is only thereafter that the acquiring authority can arrive at the satisfaction that it is necessary to acquire the land. The provisions of Section 4, therefore, substantially encapsulate the provisions of Sections 4 to 6 of the Land Acquisition Act, the only major difference being that, under the said Act, it is the District Collector and not the State Government who must be satisfied that the land is required to be acquired. It does not appear to us that this is a provision which is unreasonable or arbitrary."

(Emphasis added)

15. Learned Additional Advocate General has made the aforesaid observation his main plank in contending that since the provisions contained in Section 4 "substantially encapsulate" the provisions of Sections 4 to 6 of the Land Acquisition Act, the decision of the Supreme Court in AIR 1968 SC 432 (cited supra) laying down the ratio that after receipt of the report under Section 5-A of the Land Acquisition Act, 1894, there is no necessity for the State Government to give any further opportunity of hearing or even opportunity of making representation by the land owner, apply with full vigour to the State Act.

16. It is true that Section 4 of the State Act substantially encapsulates the provisions of Sections 4 to 6 of the Central Act. However, there are certain subtle and yet important differences between the two Acts. As a matter of fact, in AIR 1995 SC 2114 (cited supra), the Supreme Court itself observed that there was a major difference to the effect that under the State Act it is the District Collector and not the Government, who must be satisfied that the land should be acquired. It is of course true that this major difference did not make the provisions contained in Section 4 unreasonable or arbitrary as observed by the Supreme Court. Apart from the fact

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that under the Central Act the ultimate decision as to whether the land should be acquired or not vests with the State Government and not with the District Collector, who obviously is less experienced, there are certain other important differences which can be noticed.

17. In the Central Act, Section 5-A itself contains detailed provision enabling the person interested to object to the land acquisition, as apparent from Section 5-A(1). Under Section 5-A(2), every such objection is required to be made before the Collector (which means the Land Acquisition Collector as defined) and such provision itself expressly contemplates that the Collector shall give the objector an opportunity of being heard. Thereafter the Collector is empowered to make reports <u>together with record of the proceedings held by him</u> for the decision of the appropriate Government. Section 5-A(2) itself contemplates that the decision of the appropriate Government on the objection shall be final. Under the Land Acquisition (Tamil Nadu Amendment) Act,1996 (Act XVI of 1997), certain amendments have been effected in respect of Section 5-A(2) of the Central Act and as per such Tamil Nadu Amendment, the report is required to be made to the Government, where the notification under sub-section (1) of Section 4 was published by the Government and to the Commissioner of Land Administration, where the notification under sub-section (1) of Section 4 was published by the Commissioner of Land Administration or by the Collector. In exercise of power conferred under Section 55(1) of the Central Act, Rules have been amended as per Land Acquisition (Tamil Nadu) Rules. Under Rule 4 (b), notice is required to be given to the objector as well as to the Department or the company requiring the land and the copies of the objections are required to be forwarded to such department or company and such department or company is permitted to file statement by way of answer to the objections. Under Rule 4(c), on the date fixed for enquiry, the Collector is required to hear the objector as well as the department or the company and record any evidence that may be produced by both in support of the objections and in support of the need for acquiring the land. Under Rule 5, on completion of the enquiry, the Collector is required to submit the case for the decision of the Government through the Commissioner of Land Administration in the manner provided in Section 5-A(2) of the Land Acquisition Act and under Rule 6, *"On consideration of the objections and the reports thereon, if Government decide that the land should be acquired, the draft declaration under Section 6 shall be approved by the Government and published in the Tamil Nadu Government Gazette as required under sub-section (1) of the said section in two daily newspapers circulating in that locality."*

It is thus obvious that the statutory provisions including the Rules contain the detailed provisions in the manner in which such enquiry is to be held and the extent to which the principles of natural justice are required to be followed.

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18. Under the State Act, the statutory provisions in the shape of Section 4 and Rule 3 are silent regarding holding of any enquiry (either by the District Collector or by the authorised officer). The statutory provisions merely contemplate issuance of notice to show cause and the Rules only contemplate issuance of notice in Form I. However, such Form I specifically contemplates "the statement of objections, if any," received within the time stipulated will be enquired into "at a particular place" on "a particular date" at the office of "a particular officer", to be specified in such notice. The Form-I further contemplates that the person interested is at liberty to appear and to adduce any oral and documentary evidence in support of his objection. It is no doubt true that such a notice in the statutorily prescribed form can be considered as part of the Rules. However, the procedure to be followed by the authorised officer is not specifically laid down, save and except as contained in Section 4 (3)(b). This clause only contemplates that the officer authorised shall make report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. It further contemplates that the District Collector may pass such orders as he may deem fit after considering such report. The provisions contained in the Act, the Rules or in Form-I do not specifically envisage as to which record will be placed before the District Collector. Similarly the provisions are silent as to whether the copy of report of the authorised officer is required to be furnished to the objectors. The principles of natural justice regarding furnishing of copy of report can be considered as super added to such provisions. It cannot be said that merely because the Form-I does not specifically prescribe any further opportunity, such opportunity is impliedly proscribed. Since the Central Act had specifically and in detail made certain provisions, it is reasonable to conclude that the Central Act has exhaustively laid down the manner in which and the extent of principles of natural justice is required to be complied with and impliedly excluded any other extension of principles of natural justice; whereas under the State Act the statutory provisions and the Rules being silent, the scope and extent of natural justice to be followed need not be confined to whatever has been described in the Form-I.

19. Under the Central Act, the power of eminent domain is with the appropriate Government, which obviously would mean an officer of very high rank and experience, whereas under the State Act it is with the Collector, who obviously is an officer of much inferior rank and less experience as compared to the Secretary to the Government. Since enormous power and responsibility have been vested with a comparatively less senior and less experienced officer, to lessen the possibility of any arbitrary and immature decision being taken, it is always desirable to strengthen the procedural safeguard by reading into the provisions, the principles of natural justice in the shape of at least giving an opportunity of making a further representation to the Collector on the recommendation / report of the authorised officer.

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20. This aspect can be viewed from another angle. Neither in Section 4 nor in the Rules or even in the Form-I, there is any guideline prescribed as to when the matter would be delegated to the authorised officer or when the matter is to be retained by the Collector. Under the provisions of the State Act, certain power can be exercised by the prescribed authority. According to Section 3(j), "Prescribed Authority" means any authority or Officer authorised by the Government in this regard, by notification. However, "authorised officer" as contemplated in Section 4(2) or (3) is an officer to be authorised by the District Collector and may be different from the prescribed authority. This is clear from the expression contained in Section 4(3)(b) to the effect "*Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), the officer so authorised shall make a report to the District Collector ...*" The question as to whether the proposal to initiate acquisition proceedings is to emanate from the District Collector or an officer authorised by the District Collector is thus left to the discretion of the District Collector. If the District Collector deigns it fit to issue notice himself, the concerned owner or the interested person will have the privilege of filing his objection and having the matter enquired into by the District Collector and can thus avail the benefit of enquiry and personal hearing before the District Collector, whereas if the District Collector for whatever reason thinks it proper to delegate such power to the officer authorised by him, such objection is to be filed before the authorised officer and the enquiry is to be held by such authorised officer and thereafter the report is to be submitted before the District Collector. Under the Central Act, there is no such possibility as the enquiry under Section 5-A is statutorily required to be made by one authority, namely, the Collector (The Collector as defined in the Land Acquisition Act, 1894).

21. In this connection, it may be stated that when specifically question was put to the learned Additional Advocate General as to in which matters the notice will be issued by the District Collector and in which matters the notice will be issued by the authorised officer, learned Addl. Advocate General submitted that when a smaller patch is required to be acquired and less number of persons are interested in filing the objection, the Collector can "conveniently take up the matter as he can spare some time" and if the extent of land required to be acquired is more and as such more number of persons are likely to be interested in filing objections, the District Collector because of his manifold other duties may not have sufficient time to tackle the matter and in such an event he may authorise another officer to issue notice and to hold enquiry and to submit the report.

22. We find this submission to be rather inappropriate and unconvincing and do not think such an approach would be a proper approach. We rather feel that if more persons are likely to be affected, it would be expected of the Collector to bestow

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personal and careful attention rather than when lesser number of persons are likely to be affected.

23. Either way the situation does not appear to be happy and there is no apparent guideline in the matter. Even though the validity of such provision does not appear to have been challenged on account of excessive and unbridled delegation, the matter can be regulated by laying down well defined guideline in the shape of statutory rules rather than leaving it to the untrammeled discretion of the Collector. At any rate, the possibility of such challenge can be waived by following a definite procedure to the effect that the cases where the objections are required to be filed before the authorised officer and enquiry is to be held by such authorised officer, the persons likely to be affected can be given some semblance of equality in treatment by giving them opportunity of filing further representation to the District Collector by pointing out the perceived shortcomings in the report of the authorised officer and by highlighting their own grievances.

24. Apart from the above, subtle and yet important distinctions between the two Acts, there are other dissimilarities, particularly after the amendment of the Central Act by Act 29 of 1984, which can be noticed hereunder.

Under the State Act, no time limit is fixed for completion of the enquiry either before the District Collector or before the authorised officer and for taking any appropriate decision, whereas under the Central Act, specific time frame is contemplated, including the time fixed for completion of award enquiry. Under the State Act, solatium payable is significantly less than the solatium payable under the Central Act after such amendment has been effected. Similarly there is no provision corresponding to Section 23(1-A) and the interest payable remains unaltered notwithstanding the fact that under the Central Act interest payable has been increased. These are the matters which are required to be considered by the State Government. Since the State Government is expected to discharge its duty as an ideal State, it is obvious that the State is required to balance different factors and to come to an appropriate decision. We are conscious that mere disparity in payment of solatium and other benefits may not be a ground for questioning the validity of an Act. However, as an ideal State, it is obviously always the duty of the State to dispel any doubt regarding inequality. In this context, it has to be remembered that the State Government has also power to acquire lands for the purpose of rehabilitation of the persons belonging to "other backward communities" or "most backward communities", in which event, the State is required to take resort to the provisions contained in the Central Act. Even though the object of acquisitions under these two Acts may be similar, that is to say, to rehabilitate the deprived persons of the society, the resultant compensation may vary to great extent, which is again a matter required to be considered by the State Government.

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25. These being some of the important distinctions, it cannot be said that both the statutes are in pari materia in all aspects and we venture to observe that ratio of the decisions of the Supreme Court in AIR 1968 SC 432 and AIR 1977 SC 497 (cited supra) may not be made applicable and the persons likely to be affected should be given further opportunity of making a further representation to the District Collector on the report / recommendation of the authorised officer.

26. The Division Bench decision in 1998 (1) CTC 281, contemplated giving a further personal enquiry / hearing before the Collector. In our opinion, such a conclusion cannot be envisaged because in such an event there will be duplication of enquiry inasmuch as one enquiry will be held by the authorised officer and another enquiry will be held by the District Collector. Therefore, it would be reasonable to conclude that where the enquiry is held by the authorised officer, the report of such officer shall be made available to enable the person interested to make a further representation to the District Collector instead of insisting upon a second formal enquiry.

27. It was submitted on behalf of the State that if copy of the report of the authorised officer is to be furnished and opportunity of making a further representation to the District Collector would be given, the proceedings may be delayed and the object of the Act for speedy acquisition may be defeated.

We do not think that by furnishing a copy of the report / recommendation of the authorised officer and giving opportunity of making a further representation would unduly delay any such proceedings. In our opinion, if the copy of the report / recommendation of the authorised officer is given to the owner at the time when such report / recommendation is sent to the District Collector and the owner is called upon to make further representation, if any, within a period of two weeks from the date of receipt of such report, the proceedings would not get unduly delayed.

28. We feel emboldened to take the above view, in view of the expanding horizons of the principles of natural justice and extended application of such principles to matters which are even considered to be administrative in nature.

29. Mr.S. Parthasarathy, learned Senior Counsel relying upon the decision in AIR 1959 SC 308 (GULLAPALLI NAGESWARA RAO AND OTHERS v. ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION AND ANOTHER), contended that if one person, namely, the authorised officer, hears and another, namely, the District Collector, decides, then the personal hearing becomes an empty formality and, therefore, a further opportunity of personal hearing should be given by the District Collector, who has to take up a final decision.

The principle laid down by the Supreme Court in the aforesaid decision related to the question of personal hearing in a quasi-judicial proceedings and we do not think such proposition could be

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made universally applicable to a proceeding which is essentially administrative in nature.

It was submitted on behalf of the petitioners that the power exercised under Section 4 of the Act should be considered as exercise of quasi-judicial power as any decision of the Collector is likely to affect the right of the person whose property may be acquired.

30. In AIR 1964 SC 648 (JAYANTILAL AMRATLAL SHODHAN v. F.N. RANA AND OTHERS) it has been observed that the report submitted by the Collector under Section 5-A of the Land Acquisition Act, 1894 is an administrative report and the subsequent decision of the Government under Section 6 is equally an administrative decision.

31. In AIR 1971 SC 1188 (PARSHOTTAM JADAVJI JANI v. THE STATE OF GUJARAT AND OTHERS) it has been observed:-

> " 5. .... When rules have been framed regulating the enquiry under Section 5-A of the Land Acquisition Act, 1894, it is not necessary to consider whether the enquiry is administrative or quasi-judicial and whether rules of natural justice have been complied with .... "

32. Though it is not possible to agree with the submission made by the petitioners that enquiry under Section 4 and the subsequent decision of the Collector partake the nature of the quasi-judicial enquiry, the trend of law now universally accepted is that even in administrative matters there is duty to act fairly and not arbitrarily and to apply the principles of natural justice.

33. In AIR 1970 SC 150 (A.K. KRAIPAK AND OTHERS v. UNION OF INDIA AND OTHERS), it was observed :

> "13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. ... In recent years the concept of quasi-judicial power has been undergoing a radical change; what was considered as an administrative power some years back is now being considered as a quasi-judicial power.
>
> 14. ... With the increase of the power of the administrative bodies it has become necessary to provide guidelines for the just exercise of their power. To prevent the abuse of that power and to see that it does not become a new despotism, Courts are gradually evolving the principles to be observed while exercising such

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powers. In matters like these public good is not advanced by a rigid adherence to precedents. New problems call for new solutions. It is neither possible nor desirable to fix the limits of a quasi-judicial power. ...

...

20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules, namely (1) no one shall be a judge in his own cause (Nemo debet esse judex propria causa), and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is not questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in Suresh Koshy George v. University of Kerala, Civil Appeal No.990 of 1968, D/- 15-7-1968 = (AIR 1969 SC 198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame-work of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

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34. In AIR 1991 SC 471 (UNION OF INDIA AND OTHERS v. MOHD. RAMZAN KHAN), while considering the effect of 42nd Amendment doing away with the requirement of issuing a second show cause notice relating to proposed punishment, the Supreme Court had observed that whenever the enquiry officer is other than the disciplinary authority and the report of the enquiry officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice.

35. Such question was again raised before the Constitution Bench in AIR 1994 SC 1074 = (1993) 4 SCC 727 (MANAGING DIRECTOR, ECIL, HYDERABAD, ETC. v. B. KARUNAKAR, ETC.,), wherein it was observed :-

> "6. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: *In A.K. Kraipak v. Union of India, (1970) 1 SCR 457: (AIR 1970 SC 150)*, it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held in good faith and without bias and not arbitrarily or unreasonably is now included among the principles of natural justice.
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> In *Chairman, Board of Mining Examination v. Ramjee, (1977)2 SCR 904 : (AIR 1977 SC 965)*, the Court has observed that natural justice is not an unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such

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essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures.

In *Institute of Chartered Accountants of India v. L.K. Ratna, AIR 1987 SC 71, Charan Lal Sahu v. Union of India, (1990) 1 SCC 613 : (AIR 1990 SC 1480), (Bhopal Gas Leak Disaster Case) and C.B. Gautam v. Union of India, (1993) 1 SCC 78*, the doctrine that the principles of natural justice must be applied in the unoccupied interstices of the statute unless there is a clear mandate to the contrary, is reiterated."

7. ... While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the 42nd Amendment.

The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have

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a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer to constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.

It will thus be seen that where the Inquiry Officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings. ...

Hence it has to be held that when the Inquiry Officer is not the disciplinary authority, the delinquent employee has right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or

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innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

Hence the incidental questions raised above may be answered as follows :

(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

...

(iii) Since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471)(supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the

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non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with backwages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/Tribunals find that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. ..." (Emphasis added)

36. It is true that the aforesaid observations relating to various facets of natural justice were made in the context of service law jurisprudence. One of the important as well as apparent tenets of the judgment is to the effect that where the

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enquiry is conducted by a person other than the deciding authority, furnishing of such report is considered as an important facet of principle of natural justice because at that stage it is not known as to what extent the deciding authority would be influenced or guided by the observations made in the report of the enquiring authority. This aspect of natural justice can be held applicable to the Act as the principle that a person before being deprived of his property should be given a reasonable opportunity, can be considered as part of law recognised under Article 300-A of the Constitution. As already noticed, the statutory provisions contemplate issuance of notice to show cause. The statute does not envisage any embargo regarding the extent and content of natural justice to be followed. Similarly the rules do not specifically contemplate any such embargo and the Form prescribed under the Rules need not be read as limiting the concept of reasonable opportunity which is implicit in the law relating to acquisition of private property by the State. While the superior right of the State to acquire any property in exercise of the concept of eminent domain cannot be denied, it must be considered that such right can be exercised by the State by following reasonable principles of natural justice. The salutary principles made applicable by the Constitution Bench in the matter relating to disciplinary proceedings can also be made applicable to the proceedings for land acquisition under the Act.

37. The desirability of furnishing a copy of the report to enable the land owner to make a further representation to the District Collector does not mean that in every case, where such report has not been furnished, the ultimate order passed by the District Collector deciding to acquire the land is automatically vitiated. The scope for judicial interference in the matter relating to acquisition of land obviously being very limited, the court in each case is required to find out whether non-furnishing of the report in any way has prejudiced the person concerned. The object of furnishing the report and affording further opportunity to the land owner to make a further representation is obviously to pinpoint any deficiency in the report of the authorised officer. If any particular aspect has been highlighted by the land owner and has not been considered by the authorised officer, the land owner would get a further opportunity to highlight such aspect before the District Collector. In other words, if the authorised officer has considered the relevant aspects indicated by the objector and made his recommendation, merely because a copy of such report is not furnished and no further opportunity is given to the land owner, may not be a ground to quash the land acquisition proceedings. On the other hand, if important aspects, which have been highlighted by the land owner, have been ignored by the authorised officer, it may be reasonable to infer non-furnishing of such report and non-offering of opportunity to make further representation might have vitiated the ultimate decision of the District Collector. These are matters to be considered on the basis of the facts and circumstances in each acquisition and it should not be construed that as a matter of law in every case where copy of the report has not been furnished and opportunity of making further representation had been denied, it is sufficient to

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quash such acquisition. Ultimately the court has to judge the prejudice caused to such person by keeping in view the facts and circumstances in particular case.

38. So far as Question No.2 is concerned, since it is construed by us that it is necessary for the Collector to give opportunity to the owner to file further representation on the report / recommendation made by the authorised officer, such copy of the report / recommendation is required to be furnished. We also add that in view of the provisions contained in the Right to Information Act, 2005 the owner would be entitled to copy of the report of the authorised officer.

39. It was submitted on behalf of the State Government that since specific provisions had been made in Section 4 and Rule 3 and particularly in Form I, it would not be appropriate to incorporate any other principle of natural justice.

A similar contention had been repelled by the Supreme Court in the decisions reported in AIR 1978 SC 851 (MOHINDER SINGH GILL v. THE CHIEF ELECTION COMMISSIONER, NEW DELHI) and AIR 1981 SC 136 (S.L. KAPOOR v. JAGMOHAN AND OTHERS). In the later decision, relying upon the decision reported in AIR 1978 SC 851, it was observed :-

> "10. ... We are unable to agree with the submission of the learned Attorney General. It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails civiil consequences. This was also the view taken in Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi (1978) 2 SCR 272 : (AIR 1978 SC 851), where it was observed (at p.316):
>
> > "We have been told that wherever the Parliament has intended a hearing it has said so in the Act and the rules and inferentially where it has not specified it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation."

40. It is easier to answer question No.3. The learned Single Judge has referred to the Division Bench decision reported in 2005 (2) LW 199 (THE DISTRICT COLLECTOR, NORTH ARCOT AMBEDKAR DISTRICT AND ANOTHER v. MANICKAM). In the aforesaid decision, M.Katju, C.J., as his Lordship then was, speaking for the Bench observed :-

> "8. In the present case, it appears that the order of the District Collector was passed in a mechanical manner without proper application of mind by merely filling up a cyclostyled form. We cannot

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approve of such kind of orders. It may be that the Special Tahsildar, who was authorised by the District Collector, considered the objections of the land owners, but in our opinion the District Collector must also consider those objections and apply his own mind to those objections, as has been held in the Wednesbury case (see quotation above). Though we agree with the learned Special Government Pleader that if opportunity of hearing has been given by the person authorised by the District Collector under Section 4 (2) of the Act (in this case the Special Tahsildar) it is not necessary for the District Collector to give a second opportunity of hearing, yet in our opinion the District Collector must certainly apply his own mind to the objections made by the land owner to the acquisition as they affect his very valuable rights. The Collector need not write an elaborate order like a judgment of a Court of Law while rejecting the objections of the land owner, but he must at least in brief mention the reasons why he is rejecting the objections so that the land owner may have the satisfaction that his objections have been considered, and this Court also may be satisfied that the District Collector had applied his mind to such objections."

41. So far as the first part of the observation regarding the necessity for the District Collector to give second opportunity of hearing is concerned, such aspect has been dealt with while considering question Nos.1 and 2. However, so far as the latter part of the observation laying down the necessity of the District Collector to apply mind to the objection made by the land owners and to indicate the reasons, however brief the reasons may be, must receive our approval without much demur. In view of the power of eminent domain the State obviously cannot be denied such right. However, right to land being a constitutional right recognised under Article 300 A of the Constitution, such right can be denied only in accordance with law. Law which provides for such acquisition of land obviously should stand the test of lack of arbitrariness as otherwise such law may fly in the face of Article 14 and may be Article 21. Even though the substantive right of the State to acquire land cannot be denied, such law providing for acquisition of land should satisfy the test of procedural reasonableness and it is therefore apparent that the authority acquiring such land (in the present case the District Collector) must be satisfied about the necessity to acquire such land and while arriving at such satisfaction, the authority is also required to consider the objections raised by the land owner. The authority must be alive to the requirement of balancing the need of the State as well as peculiar disadvantages to be suffered by the land owner. As observed by the Division Bench even though the authority is not expected to write "reasoned judgement", the materials on record must indicate that the authority has applied its mind. Obviously the magic incantations of the words used in the Act or the Rules would not indicate that mind has been applied and therefore, it is always desirable for the authority to

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indicate the reasons why such authority is taking a decision to acquire the land and rejecting the objection of the land owner. As a matter of fact, to be fair to the learned Additional Advocate General, he has stated in no uncertain term that the need to give reasons for the decision has to be read into the enactment. In the aforesaid context, the learned Additional Advocate General has also referred to the decision of a learned Single Judge of this Court in 2004(3) MLJ 129 (V.KANNIAN v. THE COLLECTOR, SALEM DISTRICT, SALEM AND OTHERS). Therefore, in our opinion, the requirement to give reasons however brief the reasons may be, must be read into the provisions and this requirement is not merely confined to the cases where the Collector is considering the reports submitted by the authorised officer, but such requirement is also necessary while the Collector himself is dealing with the matter by holding an enquiry.

42. However, it is necessary to enter a small caveat. The observation made by the Division Bench or the single Judge regarding requirement to indicate reason while passing the order has to be understood in the context of non-application of mind. Even though in a given case the order which is communicated to the land owner does not indicate any reason why the objection has been rejected, if the application of mind is reflected in the file even by way of notings and endorsements, the ultimate decision to acquire the land cannot be said to be vitiated merely because the order which is communicated to the land owner/objector does not contain any detailed reasons. The requirement is that the materials on record, that is to say the relevant file, should indicate application of mind to the relevant facts and circumstances and not passing of a formal reasoned order as is required in judicial or quasi-judicial proceedings. The function obviously being administrative in nature, it is futile to expect furnishing of detailed reasons in the order which is communicated to the person. It is necessary to enter such caveat lest it may be construed that in every case, where the order of rejection communicated to the land owner does not contain the reasons, the proceeding stands vitiated. Ultimately the court is required to find out in each case whether there has been application of mind. Therefore, the brief reasons, which are contemplated, can be given either in the file in the shape of notings, endorsements, etc., or even can be reflected in the order. But, mere non-reflection of reasons in the order communicated or in the notice published in the Gazette, would not be sufficient to hold that there has been non-application of mind and the question as to whether there has been application of mind or non-application is required to be considered on the basis of the return filed and the relevant file to be produced before the Court.

43. In view of the aforesaid discussion, our conclusions are as follows :-

The owner should be furnished with a copy of the report / recommendation of the authorised officer. Thereafter, he should be given two weeks' time to make further representation, if any, before the District Collector. It is not necessary for the District Collector to give a further personal hearing or make any

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further enquiry. However, mere non-furnishing of the report would not have the ipso facto effect of vitiating the proceedings and the question of prejudice to the land owner is required to be considered in each case depending upon the facts and circumstances. The District Collector is expected to reflect the reasons, but merely because the communication to the land owner does not contain the reasons, the decision of the Collector is not ipso facto vitiated and it would always open to the concerned authority to prove before the Court, if such action of the Collector is challenged, that there has been application of mind and the reasons are available in the relevant records relating to such acquisition. The necessity to record the reasons is applicable where the Collector himself makes the enquiry and also where the Collector takes an appropriate decision on the basis of the report / recommendation made by the authorised officer.

All the writ petitions are now required to be placed before the learned single Judge.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rg/dpk

To

1. The Section Officer,
Writ Section,
High Court, Madras.

1 cc to M/s. Anand Das Gupta Sagar, Advcate, 38784
1 cc to Mr.N. Kolandaivelu, Advocate, sr. 38708
1 cc to mr.S. Mani, Advocate, sr. 38638
1 cc to Mr.A.R. Nixon, Advocate, Sr. 38700
1 cc to M/s. Muthumani Doraisamy, Advocate, Sr. 38709
1 cc to Government Pleader, Sr. 38592

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